

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

DAVID SIDOO, *et al.*,

Defendants.

Crim. No. 19-cr-10080-NMG-MPK

JOINT INTERIM STATUS REPORT

Pursuant to Local Rule 116.5(b), the parties hereby file the following status report prepared in connection with the Interim Status Conference that is currently scheduled for January 17, 2020.

(1) Automatic Discovery & Pending Discovery Requests

Automatic Discovery

The Government mailed automatic discovery in this case to Defendant Sidoo on or about April 25, 2019, the Colburn Defendants on or about April 30, 2019, and the remaining Defendants on or about May 17, 2019. The Government produced supplemental discovery to all Defendants on or about May 29, 2019, July 1, 2019, August 30, 2019, October 31, 2019, and January 9, 2020. The discovery was provided on hard drives, DVDs, and thumb drives. The Government provided Defendants with indices where required and some, but not all discovery has been produced as databases in load-ready forms. Defendants are currently reviewing this discovery.

With the exception of Defendant McGlashan, who has produced one, three-page document of Rule 16 discovery, and Defendant Zangrillo, who has produced the materials he acquired via Rule 17(c) subpoena from the University of Southern California, Defendants have not yet produced any discovery to the Government despite Government requests. The Defendants believe that it is premature to do so at this time. The Government disagrees with the Defendants' assertion that it is "premature" to provide their own discovery. Rule 16(b) and Local Rule 116.1(d) clearly

state Defendants must provide reciprocal Rule 16 discovery to the Government within 28 days of arraignment. The Government contends that it has complied with its discovery obligations and continues to comply with them. The Defendants have now had approximately 8 months to review the Government's discovery, confer with their clients, and strategize regarding potential defenses. It is not premature to provide discovery, which they can later supplement, to the Government as required by the rules. The Defendants have filed certain motions to compel, see below, and do not agree that the Government has yet complied with its discovery obligations and contend that they cannot reasonably be expected to identify documents subject to reciprocal discovery until the Government has completed its Rule 16 obligations.

Pending Discovery Requests

Defendant Abdelaziz filed a motion to compel on November 13, 2019 (Dkt. #648). The Government filed its opposition on November 27, 2019 (Dkt. #670), and Defendant Abdelaziz filed a reply brief on December 6, 2019 (Dkt. #678). On December 13, 2019, the Court ordered the Government to provide the Court, for *in camera* and *ex parte* inspection, certain materials related to Defendant Abdelaziz's motion (Dkt. #692). The Government complied with this Order on December 23, 2019.

On December 9, 2019, Defendants Sidoo, Abdelaziz, Diane and Todd Blake, Palatella, Wilson, Zadeh, and Zangrillo filed a motion for production of exculpatory evidence regarding Title III interceptions and consensual recordings (Dkts. #681, 691). Defendants Amy and Gregory Colburn, McGlashan, Kimmel, Giannulli, and Loughlin moved to join this motion (Dkts. #682-684, 689), which the Court granted (Dkts. #687, 701).

On December 13, 2019, Defendants Giannulli and Loughlin filed a motion to compel (Dkt. #693).

On December 18, 2019, Defendant McGlashan filed a motion to compel (Dkt. #696).

On December 18, 2019, Defendant Wilson filed a motion to compel (Dkt. #699).

On December 19, 2019, the Government moved to continue deadlines for oppositions and reply briefs for the motions to compel filed between December 9 and 18, 2019 (Dkt. #702). The Court allowed this motion on December 23, 2019 (Dkt. #705). Accordingly, the briefing schedule on these discovery motions is as follows:

- Opposition briefs: January 14, 2020
- Reply briefs: January 28, 2020
- Sur-Reply briefs: February 4, 2020
- Hearing: Potentially February 11, 2020; the Government has requested February 14, 2020

In addition to the foregoing discovery motions, the Government is in the process of responding to pending discovery requests from Defendants Diane and Todd Blake, Kimmel, Sidoo, and Zangrillo that may result in the filing of further motions to compel additional discovery.

(2) Additional Discovery

The Government produced additional discovery on January 9, 2020, and anticipates producing the e-mails obtained by the Government through court-authorized search warrants for the emails of certain of the Defendants within the next few weeks. To the extent the Government obtains additional Rule 16 discovery, the Government will provide it to Defendants pursuant to Local Rule 116.7.

Defendants anticipate providing discovery to the Government when they have determined what evidence, if any, to introduce in their cases-in-chief, as required by Rule 16(b)(1)(A)(ii).

(3) Timing of Additional Discovery Requests

Consistent with the Court's direction at the October 2, 2019 interim status conference that Defendants not wait until the deadline, Defendants have made numerous discovery requests and filed several discovery motions, as outlined in Section (1) above.

While recognizing that additional discovery issues may arise after these dates, and while recognizing that the defendants reserve their right to file additional motions to compel as they feel necessary, the parties propose the following briefing schedule for any additional discovery motions:

- Motions and opening memoranda March 13, 2020
- Opposition memoranda April 30, 2020
- Reply briefs May 15, 2020

(4) Protective Orders

There is a protective order currently in place. Should a party seek modification of any existing protective order, a motion will be filed with the Court to address any issue.

(5) Pretrial Motions Under Fed. R. Crim. P. 12(b)

The parties previously requested that the Court set a schedule for Defendants to file pretrial motions under Fed. R. Crim. P. 12(b) after Defendants had an opportunity to review discovery provided by the Government. The parties now propose the following briefing schedule for all Rule 12(b) motions:

- Motions and opening memoranda April 1, 2020
- Opposition memoranda May 15, 2020
- Reply briefs June 1, 2020
- Proposed Hearing Date Week of June 15 or June 22, 2020

The defendants reserve their right to file additional substantive motions and/or memoranda based on discovery that is provided on or after March 1, 2020.

With respect to the motion to dismiss filed by Defendants Amy and Gregory Colburn (Dkt. #341), all parties previously agreed and requested that resolution of that motion be stayed until the other Defendants had an opportunity to review the discovery materials from the Government to determine whether to join the motion filed by the Colburn Defendants or to file their own separate or consolidated motions. The parties now request that the Colburn Defendants' motion be treated as having been filed on April 1, 2020, consistent with the proposed briefing schedule, and any Defendant seeking to join that motion do so by April 1, 2020.

(6) Expert Discovery

The Government agrees to provide any expert witness disclosures 90 days prior to trial, and Defendants agree to provide any expert witness disclosures 30 days prior to trial.

Certain Defendants also request that the Government agree to disclose, 6 months before trial, the names and general subject-matters of its experts. Further, certain Defendants believe that the final expert disclosures should be similar in scope to those required in civil actions. The Government opposes this request, believing that there is no need to deviate from the standard time frames here with respect to expert discovery.

(7) Defenses of Insanity, Public Authority, or Alibi

No Defendant presently intends to offer defenses of insanity, public authority, or alibi.

(8) Speedy Trial Act

The 70-day period specified in 18 U.S.C. § 3161(c)(1) commenced on March 15, 2019 as to Defendant Sidoo, April 3, 2019 as to the Colburn Defendants, and April 9, 2019 as to the remaining Defendants. In Orders entered March 18, 2019, April 3, 2019, April 9, 2019, April 29,

2019, June 3, 2019, and October 2, 2019, the Court has excluded all time between March 15, 2019 and January 17, 2020 under the Speedy Trial Act. *See* Dkts. 25, 124, 129, 370, 394, & 577.

The parties have conferred and ask that the Court exclude the period of time from the time of the interim status conference on January 17, 2020 to the time of the next status conference, under 18 U.S.C. § 3161(h)(7)(A), to permit Defendants time to review discovery, confer with their respective counsel, and prepare and file Rule 12(b) motions. The ends of justice served by this exclusion outweigh the interests of the public and each Defendant in a speedy trial.

(9) Status of Plea Discussions and Likelihood and Estimated Length of Trial

Defendants Elizabeth Henriquez, Manuel Henriquez, Douglas Hodge, and Michelle Janavs pled guilty to the charges in the Second Superseding Indictment. Depending on the number of Defendants remaining for trial, the Government currently estimates that its case-in-chief would take approximately three to six weeks, assuming half-day sessions.

(10) Final Status Conference

The parties request a final status conference the week of June 15, 2020, or at such time as is convenient to the Court.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Kristen A. Kearney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 10, 2020.

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